

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:04cr308

UNITED STATES OF AMERICA

vs.

XAVIER SANTONIO LINDSAY

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ORDER

THIS MATTER is before the Court upon motion of the defendant pro se requesting that the Court modify the sentence to make it concurrent with a state court sentence, pursuant to 18 U.S.C. §§ 3584 and 3585. (Doc. No. 19).

The federal sentence was imposed on June 15, 2005. (Doc. No. 15). The state court sentence was subsequently imposed in November 2005. Accordingly, there was no sentence in place at the time of federal sentencing with which to run the sentence concurrently. See United States v. Smith, 472 F.3d 222 (4th Cir. 2006) (court lacked authority under § 3584 to run sentence consecutively to any future sentence). Additionally, Rule 35 of the Federal Rules of Criminal Procedure only allows the Court to correct a sentence within seven days of sentencing for clear error or to reduce a sentence upon the government's motion based on substantial assistance within one year of sentencing. Thus, the Court lacks authority to amend the sentence nearly two years after sentencing. Even if the Court had authority, having considered the defendant's arguments and the entire record in this case, it would not exercise its discretion to alter the sentence.

IT IS, THEREFORE, ORDERED that the defendant's request is **DENIED**.

The Clerk is directed to certify copies of this order to the defendant, counsel for the defendant, and to the United States Attorney.

Signed: March 29, 2007

A handwritten signature in cursive script, reading "Robert J. Conrad, Jr.", written over a horizontal line.

Robert J. Conrad, Jr.
Chief United States District Judge

